

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Private Land
Mobile Station
WSM 534

**Chesapeake Bay
Contractors, Inc.
Virginia Beach, Virginia**

Liability for Forfeiture

ORDER

Adopted: March 22, 1994; Released: March 30, 1994

By the Chief, Field Operations Bureau:

I. INTRODUCTION

1. The Field Operations Bureau, Federal Communications Commission (FCC), has before it a letter from the Vice President of Chesapeake Bay Contractors, Inc., (Chesapeake) Virginia Beach, Virginia, dated June 23, 1993, objecting to a \$16,000 monetary forfeiture penalty. This letter is accepted as a Petition for Reconsideration under Section 1.106 of the FCC's rules. 47 C.F.R. Section 1.106.

2. As explained below, the \$16,000 monetary forfeiture penalty issued to Chesapeake Bay is reduced to \$6,400, and this penalty is affirmed.

II. BACKGROUND

3. On April 14, 1992, an FCC engineer visited the antenna tower structure in Virginia Beach, Virginia, used by Chesapeake as an FCC licensee with the call sign of WSM 534. The FCC engineer found that the tower was not lit as required by the Commission's rules. Furthermore, the paint on the tower failed to provide contrasting colors because it was badly faded and peeling. The resulting poor visibility of the tower impaired the safety of air navigation. This is of especially serious concern because the tower is located within one mile of the Oceana Naval Air Station in Virginia Beach, Virginia.

4. On April 16, 1992, the FCC's Norfolk Office issued an Official Notice of Violation to Chesapeake, and on May 5, 1992, a Continuation of Official Notice of Violation was issued. On May 7, 1992, Chesapeake responded that the tower had been repaired. On February 4, 1993, the FCC's Norfolk Office issued a Notice of Apparent Liability for a \$20,000 monetary forfeiture penalty to Chesapeake for willful and repeated violations of Sections 17.24 and 17.50 of

the FCC's rules. 47 C.F.R. Sections 17.24 and 17.50. Section 17.24 specifies how this tower should be lit. Section 17.50 requires towers to "be cleaned or repainted as often as necessary to maintain good visibility." The Notice of Apparent Liability pointed out that the usual penalty for this type of violation was \$8,000, and indicated that the penalty was increased to \$20,000 because the violation continued for at least six days after the FCC inspection of the tower and was corrected only after Chesapeake had been repeatedly contacted by the FCC's Norfolk Office. Chesapeake responded on February 16, 1993. On May 11, 1993, the FCC's Norfolk Office issued a Forfeiture Order to Chesapeake for a \$16,000 monetary forfeiture penalty. The penalty was reduced from \$20,000 to \$16,000 because of lack of evidence that Chesapeake had previously violated the FCC's rules. The FCC's authority to impose monetary forfeiture penalties for violations of its rules is contained in Section 503(b) of the Communications Act. 47 U.S.C. Section 503(b).

III. DISCUSSION AND CONCLUSION

5. Chesapeake explains that when it received its initial license from the FCC in 1980, the license did not require that the tower be painted and lit. Chesapeake further explains that it relocated its tower in 1987, and it relied on the company that relocated the tower to install it in compliance with the FCC's rules. However, Chesapeake admits that its FCC license issued on January 5, 1988, and in effect at the time of the violation in 1992, contained "Painting and Lighting Specifications" which it "simply overlooked."

6. An FCC licensee may not delegate its responsibility to comply with the FCC's rules, and is held responsible for the acts of its agents and similarly situated persons. *Liability of MTD*, 6 FCC Rcd 34 (1991). Furthermore, a licensee is required to comply with the provisions in its license and the FCC's rules, and "oversight or failure to acquaint itself with the Commission's requirements will not excuse" a violation. *Triad Broadcasting Co., Inc.*, 96 FCC 2d 1235, 1242; 55 RR 2d 919, 924 (1984). *See also Southern California Broadcasting Company*, 6 FCC Rcd 4387 (1991). It is especially serious when a licensee overlooks a requirement that has been in its license for more than four years. Violations, moreover, that result from so-called inadvertent or clerical mistakes are subject to monetary forfeiture penalties. *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088 (1992); *Standard Communications Corporation*, 1 FCC Rcd 358 (1986).

7. Chesapeake also explains that its tower was not a hazard to air traffic since the length of the tower was only approximately eighty-eight feet and "trees in close proximity are within a few feet of the height of the tower." The usual time to seek an exemption from the FCC's rules is before a violation occurs not after a violation.

8. It was, moreover, the belief of the FCC engineer that inspected the tower that its unlit and unpainted condition presented a serious danger to aircraft because of the closeness of the tower to an airfield, and because it would be difficult to observe the thin tower structure from a moving aircraft whereas trees are readily apparent. The FCC engineer was so concerned that he urged Chesapeake several

¹ Sections 17.22 and 17.23 of the FCC's rules specify how towers should be painted. 47 C.F.R. Sections 17.22 and 17.23.

times to immediately place temporary lights on the tower while Chesapeake sought to bring the tower into compliance with the FCC's rules, and he understood that Chesapeake had agreed to do this. Radio antenna structures present a very real hazard to aircraft, and there have been serious accidents involving aircraft and towers. *See Radio Beaumont*, 13 FCC 2d 965, 966 (1968). Although Chesapeake may believe that the probability of this occurring at its tower is low, the action needed to bring the tower into compliance does not appear to be very burdensome and significantly reduces the possibility of an accident and loss of life.

9. The FCC's Notice of Apparent Liability and Forfeiture Order issued to Chesapeake stated that the violation was willful. Chesapeake denies this because "there was no premeditated ... intent to violate your rules." Section 312(f)(1) of the Communications Act defines "willful" as "the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" 47 U.S.C. Section 312(f)(1). This definition was intended by Congress to apply to the word willful as used in Section 503 of the Communications Act to assess forfeiture penalties. H.R. CONF. REP. NO. 97-765, 97th Cong., 2d Session (1982), *reprinted in* 1982 U.S. CODE CONG. & ADMIN. NEWS 2294-95. Thus, willfulness exists if there is a voluntary act or omission in that a person knew that he was doing the act in question as opposed to being accidental (such as brushing against a power switch turning on a radio transmitter). Furthermore, to establish a willful violation, it is not necessary to show that a person knew he was acting wrongfully. *See Southern California Broadcasting Company*, 6 FCC Rcd 4387 (1991). A violation, moreover, resulting from an inadvertent mistake or a failure to become familiar with the FCC's requirements is considered a willful violation. *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088 (1992); *Standard Communications Corporation*, 1 FCC Rcd 358 (1986); *Triad Broadcasting Co., Inc.*, 96 FCC 2d 1235, 1242; 55 RR 2d 919, 924 (1984). In the instant case, inaction on the licensee's part (failure to properly light the tower and maintain paint) resulted in violation of the Commission's rules.

10. Finally, Chesapeake denies that the violation was repeated. Chesapeake explains that the day after its tower was inspected by the FCC engineer, it entered into a contract to have the tower repaired, and that these repairs were completed ten days later after some delay because of bad weather and a weekend. However, the FCC engineer understood that Chesapeake had agreed to place temporary lights on the tower immediately while it was being repaired because of its nearness to an airfield, and Chesapeake failed to do so despite repeated contacts from the FCC engineer. If only these factors were involved, they would add to the seriousness of the violation and justified additional penalties for repeated violations. However, it is also recognized that Chesapeake promptly painted and lit the tower to comply with the FCC's rules. Therefore, the violation is not considered to be repeated and the appropriate monetary forfeiture penalty is \$8,000. This penalty is reduced to \$6,400 because of lack of evidence concerning past noncompliance with the FCC's rules.

11. In determining the amount of this monetary forfeiture penalty, consideration was given to the FCC's standards for assessing forfeiture penalties. *Policy Statement, Standards for Assessing Forfeitures*, 8 FCC Rcd 6215 (1993). No further adjustments appear warranted.

IV. ORDERING CLAUSES

12. IT IS ORDERED that pursuant to Section 503(b) of the Communications Act of 1934 and Section 1.106 of the FCC's rules, the monetary forfeiture penalty imposed on Chesapeake is reduced from \$16,000 to \$6,400, and that otherwise the relief sought by Chesapeake is DENIED. 47 U.S.C. Section 503(b), 47 C.F.R. Section 1.106.

13. IT IS FURTHER ORDERED that Chesapeake submit the \$6,400 monetary forfeiture penalty within 30 days of the receipt of this Order. Payment may be by check or money order payable to the Federal Communications Commission. Please place the forfeiture account number 315NF0016 on the remittance, and send it to:

Federal Communications Commission
Post Office Box 73482
Chicago, Illinois 60673-7482

14. IT IS FURTHER ORDERED that a copy of this Order shall be sent certified mail, return receipt requested, to Chesapeake Bay Contractors, Inc.,

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Smith
Chief, Field Operations Bureau